

BARON MINING CORP.

IBLA 79-2

Decided February 12, 1979

Appeal from decision of California State Office, Bureau of Land Management, which declared placer mining claim null and void ab initio. CA MC 4281.

Affirmed.

1. Mining Claims: Lands Subject to

Land which has been patented without a reservation of minerals to the United States or which otherwise has been removed from the operation of the United States mining laws is not available for the location of mining claims. Mining claims located on such land after it is so removed are null and void ab initio. Attempts to record such claims under 43 U.S.C.A. § 1744 (West Supp. 1977) are properly rejected.

APPEARANCES: O. Glenn Oliver, Vice President, Baron Mining Corp., for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Baron Mining Corp. has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated August 30, 1978, which declared the Koal #9 placer mining claim null and void ab initio.

The Koal #9 originally located as the Koal #5, May 4, 1977, is situated in the NE 1/4 SW 1/4 of sec. 26, T. 3N., R. 6W., San Bernadino meridian.

According to the Public Land Records of BLM, the land located within this claim has been patented since 1872 without mineral reservation and, therefore, is no longer available for location of mining claims. The status records show that all of the SW 1/4 of sec. 26, T. 3N., R. 6 W., is contained in Patent No. 927, issued July 20, 1872, to Frank A. Drixel.

Appellant argues that the records of the San Bernadino County assessor's office show the area of its claim to be open Government land available for filing. Apparently, these records do not reflect the true status of the land and, in any event, the BLM official records must control.

[1] Mining claims may only be located on lands open to the operation of the United States mining laws. Land which has been patented without a reservation of minerals to the United States or which otherwise has been removed from the operation of the mining laws is not available for the location of mining claims. Mining claims located on such land after it is so removed are null and void ab initio. *E.g., Floyd W. McCarty*, 28 IBLA 246 (1976); *J. P. Hinds*, 25 IBLA 67, 70, 83 I.D. 275, 276 (1976); *Montana Copper King Mining Co.*, 20 IBLA 30 (1975). Therefore, attempts to record such mining claims under 43 U.S.C.A. § 1744 (West Supp. 1977) are properly rejected.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision below is affirmed.

Edward W. Stuebing
Administrative Judge

We concur.

Newton Frishberg
Chief Administrative Judge

Joseph W. Goss
Administrative Judge

